

# ANNEX G



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**Practice Areas**

- Antitrust
- Class Actions
- Complex Business Litigation

**Education**

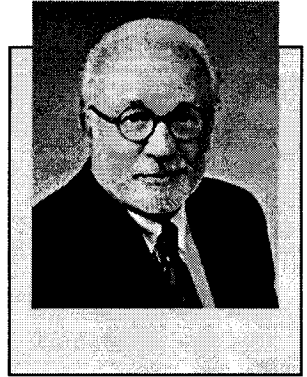
- University of California, Hastings College of Law, J.D., 1967
- University of California, Berkeley, B.A., 1963

**Bar and Court Admissions**

- State Court: California
- U.S. Circuit Court of Appeals: Fifth, Seventh and Ninth Circuits
- U.S. Supreme Court
- U.S. District Court: Northern, Central, and Eastern Districts of California, Northern District of Illinois

**Francis O. Scarpulla**

44 Montgomery Street  
Suite 3400  
San Francisco, CA 94104  
TEL: (415) 693-0700  
FAX: (415) 693-0770  
fscarpulla@zelle.com



Fran specializes in complex civil cases, primarily antitrust lawsuits, many of which are class actions. He has represented plaintiffs in many federal antitrust class actions, including among others, the Gypsum Wallboard Antitrust Litigation, Sugar Antitrust Litigation, Folding Cartons Antitrust Litigation, Fine Paper Antitrust Litigation, Corrugated Container Antitrust Litigation, Pharmaceutical Antitrust Litigation, Microsoft Monopolization Antitrust Litigation, De Beers Diamond Antitrust Litigation, Canadian Automobile Antitrust Litigation, and the Cosmetics Antitrust Litigation. In addition to federal antitrust class actions, Fran has acted as lead counsel in many class actions in California.

**Representative Matters**

*St. Joe Paper Company v. Superior Court* (state-court antitrust jurisdiction)

*Union Carbide Corporation v. Superior Court* (joinder of parties and fraudulent concealment)

*Crown Oil Corporation v. Superior Court* (federal pre-emption policies)

*B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (propriety of class action certification)

**Noteworthy**

“Antitrust Lawyer of the Year” for 2005, Antitrust Section of the California State Bar

Nominated by fellow lawyers to the Best Lawyers In America listing

Fran is AV rated by Martindale-Hubbell

**News**

Francis O. Scarpulla, 2005 Antitrust Attorney of the Year, joins Zelle Hofmann in San Francisco

**Professional Affiliations**

Golden Gate University Law School; Adjunct Professor

University of California, Hastings School of Law; Instructor - Legal Writing, 1985, 1988

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California State Bar Association - Antitrust and Trade Regulation Section Past Chair

### Past Professional Experience

Law Offices of Francis O. Scarpulla, San Francisco, CA 1970-2006

Law Offices of Joseph L. Alioto, San Francisco, CA 1967-1970

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**Craig C. Corbitt**

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**Practice Areas**

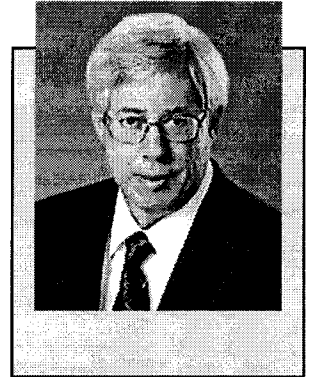
- Antitrust
- Appellate Advocacy
- Class Actions
- Complex Business Litigation
- Intellectual Property Litigation
- Securities Litigation
- Trade Regulation

**Education**

- University of San Francisco, J.D., cum laude, 1978
- University of California at Davis, A.B., 1973

**Bar and Court Admissions**

- U.S. Supreme Court
- State Court: California
- U.S. Circuit Court of Appeals: Fifth, Seventh, Ninth, and D.C. Circuits
- U.S. District Court: Northern, Eastern, Central and Southern Districts of California, District of Arizona



Craig specializes in complex commercial litigation for both plaintiffs and defendants at the trial and appellate levels, particularly antitrust, trade regulation, intellectual property, securities, and contracts. Recently, among other matters he has represented Fortune 500 companies as plaintiffs in the Vitamins Antitrust Litigation in the District of Columbia federal court, the EPDM, CR and Rubber Chemicals synthetic rubber price fixing cases in various federal district courts, a national class of consumers in antitrust litigation against De Beers in the District of New Jersey concerning the diamond industry, and classes of California and Minnesota consumers and businesses in Microsoft Antitrust Litigation in state courts. These are among the largest antitrust cases in the country. Over the past twenty years, Craig has had a central role in dozens of major antitrust cases, including *Brand Name Prescription Drugs*, *ETSI v. Burlington Northern*, and *Southern Pacific Communications v. AT&T*.

**RECENT COURT-APPOINTED POSITIONS**

Liaison Counsel and Chair of Executive Committee, *Microsoft Antitrust Litigation*, California Superior Court

Co-Lead Counsel, *Pharmaceutical Antitrust Litigation*, California Superior Court

Co-Lead Counsel, *In re Western States Wholesale Natural Gas Antitrust Litigation*, District of Nevada

Co-Lead Counsel, *Initial Public Offering Fees Antitrust Litigation*, Southern District of New York

Executive Committee, *Smokeless Tobacco Antitrust Litigation*, California Superior Court

Executive Committee, *DRAM Antitrust Litigation*, Northern District of California

Liaison Counsel, *Automobile Antitrust Cases*, California Superior Court, San Francisco

Lead Counsel, *Credit-Debit Card Antitrust Litigation*, California Superior Court, San Francisco

**Representative Matters**

*Southern Pacific Communications Co. v. AT&T*, 740 F.2d 980, 1011 (D.C. Cir. 1984)

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*Longden v. Sunderman* , 737 F.Supp. 968 (N.D. Tex. 1990)

*Anderson v. Deloitte & Touche* , 56 Cal.App.4th 1468 (1997)

*In re Vitamins Antitrust Litigation* , 120 F.Supp.2d 58 (D. D.C. 2000)

*In re Vitamins Antitrust Litigation*, 2001 WL755852 (D. D.C. 2001)

*In re Automobile Antitrust Cases I and II*, 135 Cal.App. 4<sup>th</sup> 100 (2005)

### Noteworthy

Named as an Antitrust Litigation "Super Lawyer" for Northern California 2004, 2005, 2006, 2007

AV rated by Martindale-Hubbell

### Professional Affiliations

Association of Business Trial Lawyers

American Association for Justice

American Bar Association

State Bar of California

Bar Association of San Francisco

American Antitrust Institute, Advisory Board

Federal Bar Association

American Judicature Society

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**Practice Areas**

- Antitrust
- Class Actions
- Complex Business Litigation

**Education**

- Boalt Hall School of Law, Berkeley, J.D., Environmental Specialization Certificate, 2001; Prosser Prize in Torts; Berkeley Women's Law Journal, Article Editor
- University of California, Berkeley, B.A. Environmental Science, high honors, 1995

**Bar and Court Admissions**

- State Court: California
- U.S. Circuit Court of Appeals: Ninth Circuit
- U.S. District Court: Northern District of California

**Judith A. Zahid**

44 Montgomery Street  
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jzahid@zelle.com

Judith's practice is devoted to complex litigation in the areas of antitrust and unfair competition.

**Professional Affiliations**

San Francisco Bar Association  
American Bar Association

**Past Professional Experience**

Lieff, Cabraser, Heimann & Bernstein, LLC, San Francisco, CA Associate, 2001-2002

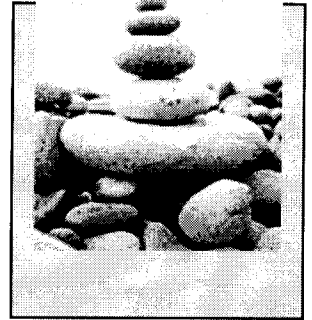


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## Our Firm

### Firm Overview

Zelle Hofmann is a national dispute resolution and litigation law firm with offices in Boston, Dallas, Minneapolis, San Francisco and Washington, D.C. The Firm handles complex litigation and disputes on a national and international basis. Zelle Hofmann represents both defendants and plaintiffs in its trial and dispute resolution practice. The Firm's broad litigation experience includes antitrust, banking, business torts, class action, commercial, employment, environmental, ERISA, financial services, insurance coverage, intellectual property, mass tort, mold claims, personal injury, product liability, professional liability, reinsurance, securities, subrogation-third party recovery, unfair business practice and unfair competition litigation. Zelle Hofmann is organized into groups that practice in particular areas, drawing on resources in all offices.



Zelle Hofmann concentrates on representing clients in connection with their most complex, problematic and high-risk lawsuits and legal disputes. Our balanced plaintiff-defense practice has enabled us to gain insight from both sides of the aisle in litigation. For example, our representation of plaintiffs gives us an advantage when representing a defendant, both because we know and have worked with many plaintiffs' lawyers, and because we understand the strategies undertaken in representing plaintiffs. Since our contingency practice obligates us to fund many of our clients' cases, we are particularly sensitive to the need to handle defense matters in an effective and efficient manner - at all times minimizing costs, avoiding unnecessary expenses, while doing everything to ensure the most favorable of results. We are also keenly focused on avoiding overstaffing of cases or undertaking tasks which have limited utility. Our ability to efficiently staff cases and to minimize out-of-pocket expenditures has served all our clients very well.

Areas in which Zelle Hofmann can be highly effective include the handling of particularly problematic cases and emerging issues, such as those with the potential for rulings which may have company-wide impact, high exposure cases, and other cases presenting the most difficult challenges. Our particular experience also lends itself to service as national or global managing or coordinating counsel in the direction and supervision of multiple claims by in-house claim staff and other outside counsel. In addition, with extensive experience in the antitrust area, Zelle Hofmann is well-suited to advise clients on antitrust matters and to represent plaintiffs or defendants in price-fixing, monopolization, restraint

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of trade, distribution and other antitrust cases, including class actions. Through our extensive experience in the intellectual property area, we are also able to help individuals and businesses protect their trademarks, copyrights, patents and other invaluable intangible assets.

The Firm has an international presence through its affiliate offices in Shanghai and Beijing, People's Republic of China, with the Chinese law firm of ZY & Partners. ZY & Partners is one of China's leading commercial law firms. It offers business consultation on a wide variety of matters, particularly to clients seeking to commence operations in China. ZY & Partners also has a rich history of representing Chinese clients, and Western clients such as The Kellogg Company, The Gap and The Walt Disney Company, before Chinese courts and administrative agencies.

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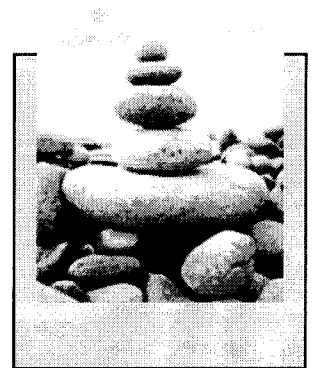
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### Diversity Commitment

Zelle Hofmann serves global and increasingly diverse clients, who gain from the varied perspectives, creativity, innovation and energy created by a diverse and inclusive workforce. The firm is committed to maintaining an environment in which its lawyers and staff are valued for their unique backgrounds, personal characteristics, and thinking and working styles. Attracting top-quality talent is crucial to our success and we seek out such skilled individuals from a wide-spectrum of backgrounds and characteristics.



We are committed to achieving diversity through recruiting, nurturing the trust and open discussions that promote inclusiveness and experimenting with ways to enable our attorneys to achieve work-life balance while fully contributing to serving our clients.

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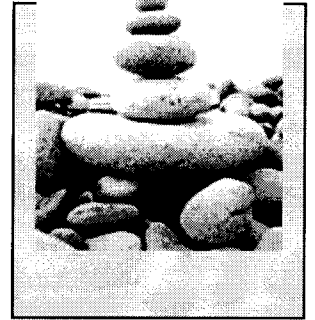
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### Litigation Technology

Technology offers tremendous information management and control efficiencies in the litigation environment. Zelle Hofmann uses technology in strategic ways that create advantages and savings for its clients. The latest technology is employed to maximize productivity and efficiency. Our attorneys are equipped with tools allowing them to be productive and responsive wherever they may be around the world. Private extranets are employed with clients and co-counsel to enhance collaboration and minimize the cost of sharing massive amounts of information. Zelle Hofmann has a full-service Litigation Support group offering E-discovery support services, image and database repositories, trial graphics, and courtroom technology support. Zelle Hofmann maintains storage area network (SAN) technology to host multi-million page document repositories. Whereas most law firms use outside data repositories such as Case Central, Zelle Hofmann hosts massive databases internally at a fraction of the typical vendor cost. In large-scale litigation, clients can easily realize six-figure savings from Zelle Hofmann's document management approach and Zelle Hofmann attorneys realize efficiency and control benefits from such internal hosting. If you have questions about Zelle Hofmann's use of technology, contact us.



## **OFFICE LOCATIONS**

### **BOSTON**

950 Winter Street, Suite 1300  
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### **SAN FRANCISCO**

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### **WASHINGTON, D.C.**

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### **BEIJING\* • SHANGHAI\***

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Web Address: [www.zelle.com](http://www.zelle.com)

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**Partners**

- Joseph W. Bell
- Michael R. Cashman
- Thomas H. Cook, Jr.
- Craig C. Corbitt
- Richard M. Hagstrom
- Michael E. Jacobs
- Daniel S. Mason
- Christopher T. Micheletti
- Mitchell J. Rapp
- James S. Reece
- Francis O. Scarpulla
- Troy J. Scibert

## **Antitrust**

Zelle Hofmann attorneys have been practicing antitrust litigation and counseling for over 30 years. We represent plaintiffs and defendants in price-fixing, monopolization, mergers and acquisitions, restraint of trade, distribution and price discrimination cases, including both individual cases and class actions. We have practiced in federal and state courts and administrative agencies throughout the country. Zelle Hofmann attorneys represent consumers, small businesses, multi-national corporations, and state and national plaintiff classes. We are experienced in counseling clients on a wide variety of non-litigation antitrust matters, including, among others, issues related to antitrust compliance programs, mergers and acquisitions, Robinson-Patman Act matters, and the formation and operation of joint ventures. We have represented parties in patent infringement cases involving claims or defenses asserting antitrust violations. We also represent corporate plaintiffs which elect to opt-out of class actions, and have obtained significantly greater recoveries on their behalf than obtained by class plaintiffs.

***View summaries of antitrust cases.***

## Antitrust Cases

### Examples of Current Antitrust Cases

***Air Cargo Shipping Services Antitrust Litigation (U.S. District Court, E.D.N.Y.).*** Zelle Hofmann represents a nationwide class of indirect purchasers of Air Cargo shipping services in this multidistrict class action. A partial settlement has been reached with one defendant for \$85 million, and a proceeding is currently underway to allocate the settlement proceeds between indirect purchasers and other plaintiffs in the litigation.

***Cosmetics Antitrust Litigation (U.S. District Court, N.D. Cal.; California Superior Court, Marin County).*** A consumer class action on behalf of California purchasers seeking redress for alleged price-fixing by department stores and manufacturers of high-end cosmetics and beauty products. The complaint alleges that the department stores and manufacturers violated and continue to violate the California Cartwright Act and the Unfair Competition Act. The case settled for injunctive relief and consideration valued at \$175 million.

***Credit/Debit Card Tying Cases (California Superior Court, San Francisco).*** Zelle Hofmann is Lead Counsel in a consumer class action lawsuit against Visa U.S.A., Inc., Visa International Corp. and MasterCard International, Inc., alleging that defendants and others collusively set unreasonably high charges for debit cards that vendors passed on to consumers in the form of higher prices on retail goods and services. The complaint alleges violations of California's Unfair Competition Law, and seeks injunctive relief and restitution arising from defendants' alleged illegal tying arrangements and anti-competitive activities.

***Chinese Vitamin C Antitrust Litigation (U.S. District Court, California and Massachusetts State Courts).*** Zelle Hofmann has been retained by a major Chinese manufacturer of Vitamin C and certain of its affiliates in connection with federal and state antitrust actions filed on behalf of putative classes of direct and indirect purchasers. The federal direct purchaser case was filed in the Eastern District of New York. Indirect purchaser cases have been filed in California and Massachusetts. All of the complaints allege a price-fixing conspiracy among four Chinese manufacturers beginning in December 2001.

***DRAM Antitrust Litigation (U.S. District Court, N.D. Cal.; California Superior Court, San Francisco).*** Zelle Hofmann is the Court-appointed Liaison Counsel and a member of plaintiffs' Executive Committee, in a nationwide class action



brought by indirect purchasers of DRAM. Plaintiffs allege that DRAM manufacturers conspired to fix the prices from April 1, 1999 through December 31, 2002. The class includes purchasers of computers and other products containing DRAM, and seeks injunctive relief and damages under state and federal laws. The case is pending in the U.S. District Court for the Northern District of California before Judge Phyllis J. Hamilton. A partial settlement has been reached with one defendant for \$82.5 million.

***EPDM Antitrust Litigation (U.S. District Court, D. Conn.)*** Zelle Hofmann represents a large corporate plaintiff which opted out of a class settlement and is pursuing separate litigation in connection with an alleged conspiracy to fix prices and allocate market shares by manufacturers of EPDM, a synthetic rubber product.

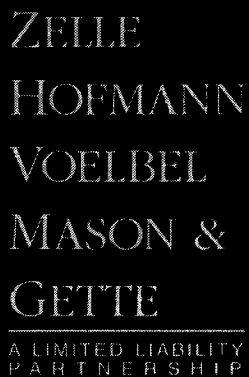
***Flash Memory Antitrust Litigation (U.S. District Court, N.D. Cal.)*** Zelle Hofmann serves as the court-appointed Co-Lead Counsel representing a nationwide class of indirect purchasers of Flash Memory products in this multi-district antitrust class action filed against the largest manufacturers of Flash Memory. Plaintiffs allege that these companies conspired to fix, raise and maintain the prices of Flash Memory. These cases are consolidated before Judge Sandra B. Armstrong in the U.S. District Court for the Northern District of California.

***Intel Corp. Microprocessor Antitrust Litigation (U.S. District Court, D. Del.)*** Zelle Hofmann represents consumers in a nationwide class action against Intel on behalf of consumer and business purchasers of x86 microprocessors used in personal computers and other products. The complaint alleges that Intel abused its dominant position in the x86 microprocessor market by, among other things, engaging in exclusive dealing arrangements with various Original Equipment Manufacturers such as Dell, HP, IBM/Lenovo, and NEC in an effort to lock AMD out of several key market segments. The complaint alleges that as a result of these practices consumers and businesses paid artificially high prices for products containing Intel's x86 microprocessors. The cases are consolidated before Judge Joseph Farnan in the U.S. District Court in Delaware, along with the related individual competitor action filed by AMD.

***Linerboard Antitrust Litigation (U.S. District Court, E.D. Pa.)*** Zelle Hofmann represents, as opt-outs, three major international companies in this federal antitrust action against integrated manufacturers of linerboard, corrugated medium, and corrugated containers. The complaint alleges that the manufacturers violated U.S. antitrust laws by, among other things, conspiring to reduce linerboard inventories and thereby increase prices. The complaint seeks damages and injunctive relief.

***Microsoft Antitrust Litigation (California Superior Court, San***





**Francisco).** Zelle Hofmann is the Court-appointed Liaison Counsel and Chair of the Plaintiffs' Executive Committee, in this indirect purchaser class action on behalf of an estimated fourteen million California consumers and businesses. The Class alleges that Microsoft illegally acquired and maintained monopolies in the markets for Microsoft's MS-DOS and Windows operating system software, as well as its Word and Excel applications software, in violation of California's Cartwright Act and Unfair Competition Act. The plaintiffs allege that, as a result of Microsoft's illegal conduct, they were overcharged for this software. In early 2003, on the eve of trial, after over three years of intensive litigation, the case settled for \$1.1 billion.

**Microsoft Antitrust Litigation (Hennepin County District Court, Minnesota).** Zelle Hofmann is the court-appointed Co-Lead Counsel for a class of indirect purchasers of Microsoft's operating systems, word processing and spreadsheet software certified by the Hennepin County District Court in Minnesota. The action is brought pursuant to Minnesota antitrust law. In June 2002, the Minnesota Supreme Court upheld the decision of the Minnesota Court of Appeals not to review the District Court's order granting plaintiffs' motion for class certification. Plaintiffs subsequently defeated Microsoft's motions for partial summary judgment and to decertify the classes. On March 1, 2004, plaintiffs, led by Zelle Hofmann, began the first-ever antitrust, consumer class action jury trial against Microsoft. Six weeks later, after plaintiffs introduced evidence of Microsoft's anticompetitive conduct that had never been publicly disclosed following the direct testimony of plaintiffs' liability expert, the parties reached a settlement for over \$175 million, the largest in the history of Minnesota consumer antitrust litigation.

**Microsoft Antitrust Litigation (Iowa District Court for Polk County).** Zelle Hofmann serves as the court-appointed Co-Lead Counsel for a class of indirect purchasers of Microsoft's operating systems, word processing and spreadsheet software, certified by the Polk County District Court in Iowa under state antitrust law. On November 13, 2006, plaintiffs, led by Zelle Hofmann and co-counsel, began the second-ever antitrust, consumer class action jury trial against Microsoft (after having successfully faced Microsoft at trial in Minnesota state court, in 2004, in a similar proceeding). Three months into trial, the parties reached a settlement for close to \$180 million in cash payments to consumers and vouchers to volume licensees and state and local governments. This is the first Microsoft action to include cash payments to consumers. One-half of unclaimed proceeds will be paid in technology vouchers to Iowa public schools. Additionally, Iowa Legal Aid received \$1 million in cash out of the cy pres funds. The settlement received final approval on August 31, 2007.



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***Microsoft Antitrust Litigation (Milwaukee County (Wisconsin) Circuit Court).*** Zelle Hofmann serves as the court-appointed Co-Lead Counsel for a class of indirect purchasers of Microsoft's operating systems, word processing and spreadsheet software, certified by the Milwaukee County District Court in Wisconsin under state antitrust law. The parties reached a settlement for close to \$224 million in vouchers to consumers, businesses, and state and local governmental entities. One-half of unclaimed vouchers goes to needy Wisconsin public schools in the form of technology vouchers which can be used for most software and hardware. The settlement received final approval on April 6, 2007.

***Microsoft Antitrust Litigation, California Government Entities (U.S. District Court, D. Md.)*** Zelle Hofmann is co-counsel for a class of California government entities, including the City of San Francisco and Los Angeles, Santa Clara, Contra Costa, and San Mateo counties as plaintiffs and class representatives, against Microsoft for unlawful monopolization of operating system, word processing, and spreadsheet software markets. The parties reached a settlement for \$70 million.

***Natural Gas Antitrust Cases (U.S. District Court, D. Nev.; California Superior Court, San Diego).*** Federal and state class actions against marketers of natural gas in California, alleging violations of the Sherman Act, California Cartwright Act and the Unfair Competition Act. The actions are brought on behalf of direct and indirect persons and entities in California who purchased natural gas between January 1, 2000 and December 31, 2001, i.e., during the California Energy Crisis. The actions allege that, among other things, the defendants and their co-conspirators engaged in a variety of anticompetitive practices which raised interstate natural gas transportation prices, the bundled price of natural gas, spot natural gas prices, and natural gas market basis swap derivative settlement amounts in and for California. Zelle Hofmann is Co-Lead Counsel in the federal case and a member of the Executive Committee in the state case. Partial settlements totaling approximately \$160 million have been reached and approved by the Court to date.

***New Motor Vehicles Canadian Export Antitrust Litigation (U.S. District Court, D. Maine).*** Zelle Hofmann has a major role in class actions on behalf of new car buyers against the major new car manufacturers, alleging a conspiracy to prevent lower-cost new cars from being exported from Canada to the United States, thereby causing higher prices for new cars in the United States. The firm is Liaison Counsel in the California state court action, which is coordinated with a nationwide federal action pending in the United States District Court in Portland, Maine. Plaintiffs have secured over \$35 million to date in partial settlements.

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***Pharmacy Benefit Managers Antitrust Litigation (U.S. District Court, E.D. Pa.).*** Zelle Hofmann represents a nationwide class of retail pharmacists alleging antitrust violations by Medco, the leading Pharmacy Benefits Manager, and Merck, a leading pharmaceutical manufacturer, in connection with the pricing and distribution of prescription drugs.

***Smokeless Tobacco Antitrust Litigation (California Superior Court, San Francisco).*** Plaintiffs have obtained preliminary approval of a \$96,000,000 settlement in the Smokeless Tobacco Antitrust Litigation pending in the California Superior Court in San Francisco, California. Zelle Hofmann attorneys have been integrally involved in this litigation, as the firm serves on the Executive Committee, and was extensively involved in all aspects of this case. The settlement was achieved after five years of hard-fought litigation, after the completion of most discovery, as trial approached, and in the context of a court-ordered mediation before a former Justice of the California Court of Appeal. The proposed settlement compensates a class of California indirect purchasers of moist snuff products which alleged that U.S. Smokeless Tobacco monopolized the moist snuff market and engaged in restrictive and exclusionary acts during the time period 1990 to the present in violation of California state antitrust laws.

***Static Random Access Memory (SRAM) Antitrust Litigation (U.S. District Court, N.D. Cal.).*** Zelle Hofmann serves as the court-appointed Lead Counsel representing a nationwide class of indirect purchasers of SRAM products in this multi-district antitrust class action filed against the largest manufacturers of Static Random Access Memory (SRAM). Plaintiffs allege that these companies conspired to fix, raise and maintain the prices of SRAM. These cases are consolidated before Judge Claudia Wilken in the U.S. District Court for the Northern District of California.

***Sullivan et al. v. DeBeers et al. (U.S. District Court, D.N.J.).*** Zelle Hofmann represents consumers in a class action lawsuit brought on behalf of diamond purchasers in the United States, alleging that the De Beers group of companies unlawfully monopolized the gem diamonds market. The court preliminarily approved a class actions settlement on March 31, 2006. The Settlement created a \$272.5 million Settlement Fund for resellers and consumers who purchased diamonds from January 1994 through December 2005. In addition, as part of the settlement, De Beers agreed to a stipulated injunction, which provides that De Beers will not engage in certain conduct that would violate U.S. antitrust laws, and will submit to the Court's jurisdiction for the purpose of enforcement of the injunction. A hearing on final approval of the settlement is expected to occur in early spring 2008.

***TFT-LCD (Flat Panel) Antitrust Litigation (U.S. District Court, N.D. Cal.).***

Zelle Hofmann serves as the court-appointed Co-Lead Counsel representing a nationwide class of indirect purchasers of LCD products, such as flat panel televisions and computer monitors, in this multi-district antitrust class action filed against the world's leading manufacturers of thin-film transistor liquid crystal display (TFT-LCD), and alleging that these companies engaged in a conspiracy to artificially inflate the prices of their LCD products. These cases are consolidated before Judge Susan Illston in the U.S. District Court for the Northern District of California.

**Examples of Significant Historical Antitrust Cases**

Below are summaries of significant historical antitrust cases on which Zelle Hofmann attorneys have worked. These cases demonstrate the breadth of Zelle Hofmann attorneys' experience in prosecuting and defending antitrust matters.

***American Basketball Ass'n v. National Basketball Ass'n (U.S. District Court, N.D. Cal.).***

An antitrust suit was filed in 1969 on behalf of the ABA, then only two years old, against the NBA, accusing the latter of attempting to eliminate competition and restrain trade through the control or monopolization of superstars and other players, facilities and television coverage. A settlement was reached in 1971, whereby both leagues promised to petition Congress for antitrust exemption legislation. The ABA contended that the NBA was not honoring this agreement and was continuing to restrain trade. Zelle Hofmann and other attorneys represented the ABA in a second action filed in 1974. In 1976, the ABA and NBA settled a few weeks before trial, with the Denver Nuggets, Indiana Pacers, San Antonio Spurs and New York Nets joining the NBA.

*Published opinions:* 404 F.Supp. 832 (S.D.N.Y. 1975); 389 F.Supp. 867 (S.D.N.Y. 1975).

***Asphalt Antitrust Litigation (U.S. District Court, N.D. Cal., D. New Mex., D. Idaho, D. Colo.).***

A price-fixing case brought on behalf of various public bodies. *See State of New Mexico v. American Petrofina, et al.*, 501 F.2d 363 (9th Cir. 1974).

***Brand Name Prescription Drugs Antitrust Litigation (U.S. District Court, N.D. Ill.).***

A federal antitrust action by plaintiff classes of retail pharmacists alleging price fixing of brand name prescription drugs by two dozen of the world's largest pharmaceutical manufacturers and wholesalers. The class obtained over \$700 million in settlements, plus commitments with respect to future pricing practices.

***B.W.I. Custom Kitchens v. Owens Illinois, et al. (California Superior Court, San Francisco.) 191 Cal.App.3d 1341, 235 Cal.Rptr. 228 (1987).***

An antitrust action on behalf of a class of California indirect purchasers of glass containers.

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***California Indirect-Purchaser Infant Formula Antitrust Litigation, (California Superior Court, Los Angeles.) 1998 WL 1031494, 1998-2 Trade Cases ¶72,336.*** An antitrust action under the California Cartwright Act on behalf of a class of consumers who purchased infant formula.

***Carbon Black Antitrust Litigation (U.S. District Court, C.D. Cal., California Superior Court, San Francisco).*** A class action brought against producers of carbon black, an engineered carbon compound, alleging violations of the California Cartwright Act and the Unfair Competition Act. The action was brought on behalf of persons and entities in California who indirectly purchased carbon black from June 19, 1999 through the present. The action alleges that, among other things, the defendants and their co-conspirators conspired and engaged in price-fixing, market allocation and other anticompetitive practices which raised carbon black prices in California. The complaint seeks injunctive relief, restitution, and damages arising from defendants' alleged unlawful activities. Zelle Hofmann was the court-appointed Co-Liaison counsel for the state court plaintiff class and a member of the plaintiffs' executive committee.

***Espirit de Corp. v. Alton Box Board Co., et al. (California Superior Court, San Francisco; U.S. District Court, N.D. Cal., 9<sup>th</sup> Cir.).*** An antitrust class action on behalf of California indirect purchasers of corrugated boxes, and involving a related federal court action addressing preemption, jurisdictional and other issues. *See Alton Box Board Co. v. Esprit De Corp.*, 682 F.2d 1267 (9th Cir. 1982).

***ETSI Pipeline Project v. Burlington Northern, Inc. (U.S. District Court, E.D. Tex.).*** This litigation was one of the largest cases ever tried in federal court. The case involved allegations that a group of railroads, including the Atchison, Topeka & Santa Fe Railway Co., conspired over a ten-year period to prevent a pipeline from being built that would transport slurried coal from South Dakota to Texas. The plaintiffs included Bechtel Corp., Texas Eastern Pipeline Co., Houston Lighting & Power Co. and the Lower Colorado River Authority/City of Austin. Zelle Hofmann attorneys and other attorneys commenced representation of defendant Santa Fe in October of 1987. Over the next two years, Zelle Hofmann attorneys were involved in many depositions, preparation of briefs on nearly every conceivable aspect of antitrust law and trial procedure, and the preparation for a lengthy trial. Trial commenced in Beaumont, Texas in January of 1989 and lasted two months. Santa Fe by then was the only remaining defendant. After the jury found for ETSI but against HL&P, Zelle Hofmann attorneys participated in a vigorous appeal, and the case was eventually settled during the pendency of the appeal when the client moved forward with its restructuring program.

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***Gypsum Wallboard Antitrust Litigation (U.S. District Court, N.D. Cal.)*** A price fixing case brought on behalf of a national class of governmental bodies. *See In re Gypsum Cases*, 386 F. Supp. 959 (N.D.Cal. 1974), 1974-2 Trade Cases ¶74,272 (N.D. Cal. 1974).

***In re Concrete Antitrust Litigation (U.S. District Court, D. Ariz.) 1980 WL 1994 (D.Ariz.), 1980-81 Trade Cases P 63,798.*** An antitrust class action on behalf of Arizona ready mix concrete purchasers.

***In re Folding Cartons Antitrust Litigation (U.S. District Court, N.D. Ill., 7<sup>th</sup> Cir.) 567 F.2d 392 (7<sup>th</sup> Cir. 1977).*** An antitrust price fixing action brought on behalf of a nationwide class of direct purchasers of folding cartons.

***In re Sugar Industry Antitrust Litigation (U.S. District Court, N.D. Cal) 1976 WL 1374.*** An antitrust price fixing action brought on behalf of three private classes of sugar purchasers in the Western United States.

***In re Toys' R Us Antitrust Litigation (U.S. District Court, E.D.N.Y.) 191 F.R.D. 347 (E.D.N.Y. 2000).*** A nationwide class action alleging anticompetitive activities in the children's toy market.

***Issuer Public Offering Fee Antitrust Litigation (U.S. District Court, S.D.N.Y.).*** A class action on behalf of issuing companies against underwriters of initial public offerings, alleging price fixing of IPO underwriting fees. Zelle Hofmann was the court-appointed Co-Lead Counsel for the plaintiff class.

***Kellogg Company – Shared Monopoly Case (Federal Trade Commission).*** Zelle Hofmann attorneys and other attorneys represented Kellogg Company in this case which literally threatened the company's existence. An activist Federal Trade Commission hoped to establish the power to regulate highly concentrated industries under Section 5 of the FTC Act even where no violation of the antitrust laws was shown. The FTC sought to break Kellogg into four companies based on the claim that it had shared a cereal monopoly with three other major cereal manufacturers through parallel, non-collusive activity. The FTC also sought to compel Kellogg to license its trademarks on a royalty-free basis. The case involved industrial organization issues of parallel corporate conduct, creation of barriers to entry and excess profitability. Zelle Hofmann attorneys participated in the development of creative defense strategies and presented and rebutted highly sophisticated economic testimony. The FTC ultimately dismissed the case, after the administrative law judge ruled in Kellogg's favor on nearly every disputed issue of fact.



***Kellogg Company of Great Britain Ltd. -- UK Cartonboard Matter (High Court of Justice, London).*** A private antitrust action in the United Kingdom on behalf of an international food manufacturer alleging price fixing by suppliers of packaging materials. Kellogg of Great Britain's claims related to the defendants' participation from mid-1986 until at least April 1991 in a European Community-wide price-fixing conspiracy, as a result of which Kellogg alleged that it was charged excessive prices for cartonboard. Zelle Hofmann negotiated a favorable settlement on its client's behalf.

***Pharmaceutical Cases I, II and III (California Superior Court, San Francisco).*** An indirect-purchaser, consumer class action alleging that prescription drug manufacturers and wholesalers kept prices unreasonably high to retail pharmacies that passed on the overcharges to consumers.

***Plumbing Fixtures Antitrust Litigation (E.D. Pa.).*** A price-fixing case brought on behalf of classes of public bodies and various private clients. See *Lindy Bros. v. American Radiator & Standard Sanitary Corp.*, 487 F.2d 161 (3rd Cir. 1973).

***Plywood Antitrust Litigation (U.S. District Court, E.D. La.).*** The Fifth Circuit upheld a jury verdict finding that three plywood manufacturers – Georgia Pacific Corp., Weyerhaeuser Co. and Willamette Industries – had conspired to fix delivered prices, with possible damages estimated to be as high as \$2 billion. Zelle Hofmann attorneys and other attorneys, representing defendants, won important rulings on the damage phase of the case at the trial level and led a successful effort to have the Supreme Court grant certiorari to review the verdict of liability. The case was eventually settled for a sum far less than projected damage exposure. Published opinions: 655 F.2d 627 (5<sup>th</sup> Cir. 1981); 663 F.2d 101 (5<sup>th</sup> Cir. 1981), cert. dismissed, 462 U.S. 1125 (1983).

***Presidio Golf Club of San Francisco, Inc., et al. v. National Service Industries, Inc. (U.S. District Court, N.D. Cal.)*** 1972 WL 606, 1972 Trade Cases ¶74,129. A price fixing action brought on behalf of class of linen service users against linen suppliers.

***Sprint (Southern Pacific Comm. Co. v. AT&T (U.S. District Court, N.D. Cal., D.C. Cir.).*** In December of 1982, Southern Pacific Co. had lost an antitrust action in the federal district court for the District of Columbia against AT&T for attempting to monopolize the market for private line telecommunications services (SPI). Also, the time was running out for filing a second action against AT&T for attempting to monopolize the market for switched telephone services (SP II). Zelle Hofmann attorneys and other attorneys represented Southern Pacific on appeal. Although the District of Columbia



Circuit upheld the judgment below, Zelle Hofmann attorneys represented Southern Pacific in SP II in federal district court in San Francisco, where it was consolidated for discovery purposes with similar actions by MCI and U.S. Transmission Systems. AT&T's summary judgment motion based on res judicata was defeated in mid-1985. While additional summary judgment motions were pending, the case settled favorably for Southern Pacific. Published opinions: 740 F.2d 980 (D.C.Cir.), cert. denied, 470 U.S. 1005 (1984); 740 F.2d 1011 (D.C.Cir. 1984).

***Vitamins Antitrust Litigation (U.S. District Court, D.D.C.).*** Zelle Hofmann represented a major international food manufacturer in a federal antitrust action against domestic and foreign manufacturers of bulk vitamins, vitamin premixes and other vitamin products used in the manufacture of food products. The complaint alleged that the manufacturers violated U.S. antitrust laws by, among other things, conspiring to fix prices, allocate sales and allocate customers. The matter was settled on a highly favorable basis to our client, for significantly more money than could have been achieved through the class action.

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## Appellate Advocacy

Zelle Hofmann attorneys have successfully litigated scores of appeals resulting in many important appellate decisions on fundamental issues of law. These include the following:

- The extent of federal question jurisdiction over state law land disputes
- Application of Daubert principles to custom and practice testimony
- The enforceability of indemnity agreements releasing construction contractors from their own negligence
- Applicability of suit limitation provisions in property insurance policies.
- Whether the costs incurred for asbestos abatement/removal are insurable under a property insurance policy.
- Whether an EPA letter constitutes a suit.
- Whether a class can be certified in real estate dispute involving thousands of similarly-situated property owners
- Whether the sudden and accidental pollution exclusion bars claims for gradual pollution.
- Whether the owned property exclusion bars coverage for pollution.
- Whether governmental agency response costs are damages.
- Proof of lost profit damages for tortious interference with the business of a start-up company
- Whether environmental claims are covered under personal injury coverage.
- Whether patent, copyright, and trademark claims are covered under advertising injury coverage.
- Whether late notice bars coverage.
- Whether voluntary payments are covered.
- Whether pre-tender defense costs are covered.
- Whether a transaction constitutes a merger or an acquisition in the D&O context.
- Whether third parties may recover for "bad faith" under med pay provisions.
- The rights and responsibilities of outside consultants representing property insurance claimants.
- Defense and indemnity allocation issues between insurers.





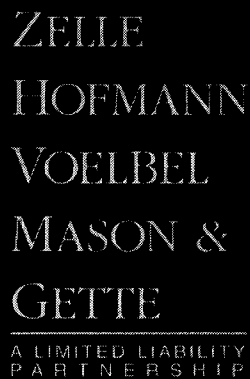
## Banking & Financial Institution Litigation

Zelle Hofmann has served banking and financial institution clients since its inception. The firm has deep experience in virtually every type of dispute which banks and financial institutions face, including:

- credit card practices
- mortgage lending practices
- investment mismanagement claims
- employment-related claims
- non-compete disputes
- claims against trustees
- antitrust issues
- class action claims
- regulatory investigations
- director and officer liability claims
- disputes involving receiverships and conservatorships
- bondholder disputes
- contract disputes
- intellectual property disputes

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## Class Actions

Zelle Hofmann attorneys represent both plaintiffs and defendants in a variety of class action matters. Zelle Hofmann attorneys have represented consumers, investors, businesses and others in class actions involving antitrust, securities fraud, financial services, consumer rights, unfair competition, unfair business practices, product liability, mass tort, ERISA and other claims.

#### **Case summaries of class action matters.**

## Examples of Class Action Cases

***Fiber Optic Right-of-Way Cases (Multiple State and U.S. Federal Courts).*** In these actions, plaintiff class members allege that the defendant telecommunications companies installed fiber optic cable on or next to railroad, pipeline, energy, or other utility companies' rights-of-way which run through the class members' property and that defendants' installation, maintenance, and operation of their telecommunications networks without the plaintiff class members' consent constitute a trespass that has unjustly enriched defendants. Zelle Hofmann attorneys and their co-counsel have obtained certification on plaintiff classes and settlements have been reached with certain defendants on certain claims.

***Fiduciary duty claims (Cal. Super. Ct., San Francisco Cty.).*** Zelle Hofmann attorneys represented a corporation in this shareholder class action charging breach of fiduciary duty in connection with the consolidation of a number of limited partnerships. An important issue in the case was whether a breach of fiduciary duty claim can be asserted where full disclosure was made to shareholders and their approval was obtained before the corporation took the actions which are asserted to be breaches of duty. The case was settled.

***Head Lice Treatment Litigation (Cal. Super. Ct., San Francisco).*** An action asserting breach of warranty and related claims in connection with four of the leading products sold as treatments for head lice infestations. The complaint alleges that since at least as early as 1995, various head lice treatment products have become ineffective for the treatment of head lice as a result of head lice developing resistance to the insecticides contained therein. The lawsuit claims that defendants nevertheless continue to manufacture and sell the products and to represent and warrant to consumers that the products are effective in killing lice and their eggs. The action seeks damages, restitution, injunctive relief, punitive damages and other remedies.

***In re Trans Union Privacy Litigation (N.D.Cal., N.D. Ill.).*** An action on behalf of a nationwide class alleging violations of the federal Fair Credit Reporting Act and unfair competition under California state law. The lawsuit alleges that a credit bureau retrieves private credit information from its credit databases, generates lists of consumers who have specific credit-based traits, and unlawfully sells those lists to target marketing and advertising firms for a substantial profit. The action seeks injunctive relief, statutory, punitive and other damages, disgorgement of profits and other remedies. This case and others have been consolidated before a single judge in the Northern District of Illinois.

***Industrial Revenue Bond Litigation (D.Ariz.).*** This was a securities fraud class action by purchasers of industrial revenue bonds that were intended to finance the development of a residential care facility and nursing home. Zelle Hofmann attorneys represented the plaintiff class. The case was settled on a favorable basis, against most of the defendants, along with a related case involving a separate, but similar bond issue.

***Mortgage Fund Limited Partnership Litigation (D.Ariz.).*** This was a securities fraud class action by purchasers of limited partnership interests in blind pool mortgage funds. The complaint alleged an elaborate Ponzi scheme whereby monies obtained from investors were used to pay distributions to investors in prior limited partnerships. Zelle Hofmann attorneys represented the plaintiff class. This case settled while summary judgment motions were pending.

***Real Estate Limited Partnership Litigation (N.D.Tex.).*** This was a securities fraud class action by purchasers of interests in 121 limited real estate partnerships. Zelle Hofmann attorneys, together with two other counsel, represented the class. The district court's opinions granting class certification and denying summary judgment are highly favorable to securities plaintiffs and deal with a host of important issues, such as class-wide proof of reliance and causation, typicality of claims, statutes of limitations, scienter and materiality. The case was settled favorably for the class.

***Shareholder Litigation (Del.Ch.).*** Zelle Hofmann attorneys represented the chief executive officer and another officer in this class action against them for breach of fiduciary duty in connection with a leveraged buyout. The case was settled in the midst of intensive discovery related to plaintiffs' motion for a preliminary injunction.

***Tucker Act Right-of-Way Cases (Multiple U.S. Federal Courts).*** Zelle Hofmann attorneys and their co-counsel are prosecuting several class action lawsuits which challenge the authority of the U. S. Government to take and use property under the Tucker Act (28 U.S.C. 1491). The Surface Transportation Board (STB) has established a policy of "Railbanking" whereby the government asserts an interest in certain abandoned railroad rights-of-way for the purpose of preserving them as transportation corridors. Theorizing that the now abandoned corridors may be needed again for transportation purposes in the future, the government has taken possession of several thousand miles of abandoned railroad rights-of-way. In many cases, the STB has classified the abandoned right-of-way for an "alternative use" which almost always involves the designation of the abandoned right-of-way as a recreational trail.

At the time of their construction, railroads often took deeds for their rights-of-way which provided that, should the right-of-way ever become abandoned, the interest in the real estate which formed the right-of-way would revert back to the underlying or adjoining property owners. Zelle Hofmann attorneys and their co-counsel are representing classes

of property owners whose deeds include such reversionary interests, and are challenging the government's taking of these rights-of-way as improper.

*Winery Limited Partnership Litigation (Cal. Super. Ct., Sonoma Cty.).* Zelle Hofmann attorneys represented a plaintiff class in this securities fraud case brought on behalf of a nationwide class of investors in limited partnerships formed to purchase and operate wineries. The case was settled favorably to the class.

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## Complex Business Litigation

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Zelle Hofmann attorneys represent litigants in virtually all areas of business litigation. The Firm has extensive trial experience in complex business litigation matters in state and federal courts, and before foreign and domestic arbitration panels. Our clients range from individuals and small businesses to Fortune 100 corporations. Our experience in large-scale complex litigation throughout the United States and abroad enables our clients to manage and resolve substantial national and international litigation efficiently.

In addition to the matters described elsewhere in the Firm's web site, the Firm's business litigation practice includes, among others, cases involving business torts, contractual disputes, dissolution proceedings, employment law, environmental law, entertainment law, fiduciary matters, insurance matters, international law, international arbitration, libel, officers and directors liability, professional services liability, slander, stock option disputes and other stock-related disputes, trade disparagement, unfair business practices and unfair competition.

### Case summaries of business litigation matters

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